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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 EDWARD DWAYNE ASHFORD,

12 Plaintiff,

13 vs.

14 JAMES E. TILTON, Secretary of California
15 Department of Corrections and
16 Rehabilitation, et al.,

Defendants.

CASE NO. 07 CV 0147 JM (WMc)

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Doc. Nos. 25 and 35

17 Edward Dwayne Ashford ("Plaintiff"), a prisoner proceeding *pro se* and *in forma pauperis*,
18 filed a civil rights action pursuant to 42 U.S.C. § 1983, alleging violation of his constitutional rights.
19 Defendants moved to dismiss the complaint on April 21, 2008. (Doc. No. 25.) Plaintiff submitted an
20 opposition brief on June 24, 2008 (Doc. No. 31) and Defendants subsequently filed a reply (Doc. No.
21 34).

22 On August 12, 2008, Magistrate Judge William McCurine, Jr. issued a Report and
23 Recommendation ("R&R") recommending the court grant Defendants' motion to dismiss. (Doc. No.
24 35.) Petitioner filed his objections on October 6, 2008. (Doc. No. 40.) Defendants submitted a timely
25 reply. (Doc. No. 41.)

26 Having carefully considered the thorough and thoughtful R&R, the record before the court,
27 Plaintiff's objections to the R&R, and the applicable authorities, the court wholly adopts the R&R.
28 (Doc. No. 35.) In particular, the court notes although Plaintiff's substantive allegations are predicated

1 on events said to occur on December 19, 2006, Plaintiff acknowledges he has failed to exhaust
2 administrative remedies with respect to alleged events on that date. (Complaint at 7:1-2; Plaintiff's
3 Opp. Brief 7:1-13.)


4 Accordingly, the court:

- 5 1) **GRANTS** Defendants' motion to dismiss as to Plaintiff's federal claims under § 1983;
6 2) Declines to exercise supplemental jurisdiction over Plaintiff's state law claims; and
7 3) **GRANTS** Defendants' request for judicial notice. (Doc. No. 25.)

8 For the reasons set forth above, the action is hereby **DISMISSED** without prejudice. The
9 Clerk of Court is instructed to close the case file.

10 **IT IS SO ORDERED.**

11 DATED: December 2, 2008

12 
13 Hon. Jeffrey T. Miller
United States District Judge